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6 ANTHONY BATTS, HOWARD JORDAN, JEFF ISRAEL,  
ERIC BRESHEARS, EDWARD TRACEY, ANTHONY TORIBIO,  
7 DAVID DOWNING, ERSIE JOYNER, MIKE POIRIER,  
AND DARRIN ALLISON

8  
9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 DANIEL SPALDING, KATHARINE  
13 LONCKE, DANIELLE LOPEZ GREEN,  
14 ADRIAN DRUMMOND-COLE, individually  
and on behalf of all others similarly situated,

15 Plaintiffs,

16 v.

17 CITY OF OAKLAND, COUNTY OF  
18 ALAMEDA, ANTHONY BATTS, HOWARD  
JORDAN, JEFF ISRAEL, ERIC  
BRESHEARS, EDWARD TRACEY,  
19 ANTHONY TORIBIO, DAVID DOWNING,  
20 ERSIE JOYNER, MIKE POIRIER, DARRIN  
ALLISON, GREGORY AHERN, individually  
and in their official capacities, and DOES 1-  
21 250, inclusive,

22 Defendants.

Case No. C11-02867 TEH

**PROPOSED**  
**STIPULATED PROTECTIVE ORDER**

1 Plaintiffs DANIEL SPALDING, KATHARINE LONCKE, DANIELLE LOPEZ GREEN,  
 2 and ADRIAN DRUMMOND-COLE, by and through their attorneys Rachel Lederman, et al., and  
 3 Defendants CITY OF OAKLAND, ANTHONY BATTS, HOWARD JORDAN, JEFF ISRAEL,  
 4 ERIC BRESHEARS, EDWARD TRACEY, ANTHONY TORIBIO, DAVID DOWNING, ERSIE  
 5 JOYNER, MIKE POIRIER, and DARRIN ALLISON ("Defendants"), by and through their  
 6 attorneys, the OFFICE OF THE CITY ATTORNEY OF OAKLAND, hereby stipulate to the  
 7 following protective order:

8 1. DEFINITIONS

9 1.1 Party: any party to this action, including all of its officers, directors,  
 10 employees, consultants, retained experts, and outside counsel (and their support staff).

11 1.2 Disclosure or Discovery Material: all items or information, regardless of  
 12 the medium or manner generated, stored, or maintained (including, among other things;

13 1.3 "Confidential" Information or Items: Information (regardless of how  
 14 generated, stored or maintained) or tangible things qualify for protection under standards developed  
 15 under F.R.Civ.P. 26(c). This material includes:

16 a) Information from personnel files of any sworn member of the Oakland Police  
 17 Department.

18 b) Information from Internal Affairs files pertaining to any sworn member of the  
 19 Oakland Police Department.

20 1.4 "Highly Confidential-Attorneys' Eyes Only" Information or Items:  
 21 Extremely sensitive "Confidential Information or Items" whose disclosure to another Party or non-  
 22 party would create a substantial risk of serious injury that could not be avoided by less restrictive  
 23 means.

24 This material includes:

25 a) Information from medical and/or psycho-therapeutic records of any party to this  
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1 action.

2  
3 1.5 Receiving Party: a Party that receives Disclosure or Discovery  
4 Material from a Producing Party.

5 1.6 Producing Party: a Party or non-party that produces Disclosure or  
6 Discovery Material in this action.

7 1.7 Designating Party: a Party or non-party that designates information  
8 or items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly  
9 Confidential-Attorneys Eyes Only."

10 1.8 Protected Material: any Disclosure or Discovery Material that is  
11 designated as "Confidential" or as "Highly Confidential-Attorneys' Eyes Only."

12 1.9 Outside Counsel: attorneys who are not employees of a Party but  
13 who are retained to represent or advise a Party in this action.

14 1.10 House Counsel: attorneys who are employees of a Party.

15 1.11 Counsel (without qualifier): Outside Counsel and House Counsel  
16 (as well as their support staffs).

17 1.12 Expert: a person with specialized knowledge or experience in a  
18 matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
19 expert witness or as an consultant in this action and who is not a past or a current employee of a  
20 Party and who, at the time of retention, is not anticipated to become an employee of a Party. This  
21 definition includes a professional jury or trial consultant retained in connection with this litigation.

22 1.13 Professional Vendors: person or entities that provide litigation  
23 support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
24 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
25 subcontractors.  
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The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or court order otherwise directs.

4.1 F.R.Civ. P. 26(c). The information sought to be protected must be properly qualified for protection under F.R.Civ. P. 26(c). Counsel shall not designate any discovery material "CONFIDENTIAL" without first making a good faith determination that protection is warranted.

4.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise stipulated or ordered, material that qualified for protection under the Order must be clearly so designated before the material is disclosed or produced.

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” at the top of each page that contains protected material.

A Party or non-party that makes original documents or materials available for

1 inspection need not designate them for protection until after the inspecting Party has indicated  
 2 which material it would like copied and produced. During the inspection and before the  
 3 designation, all of the material made available for inspection shall be deemed "HIGHLY  
 4 CONFIDENTIAL—ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
 5 documents it wants copied and produced, the Producing Party must determine which documents, or  
 6 portions thereof, qualify for protection under this Order, then, before producing the specified  
 7 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or  
 8 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY") at the top of each page that contains  
 9 Protected Material. If only a portion or portions of the material on a page qualifies for protection,  
 10 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
 11 markings in the margins) and must specify, for each portion, the level of protection being asserted  
 12 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY").

13 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
 14 that the Party or non-party offering or sponsoring the testimony identify on the record, before the  
 15 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify  
 16 any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL—ATTORNEYS'  
 17 ONLY." When it is impractical to identify separately each portion of testimony that is entitled to  
 18 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the  
 19 record (before the deposition or proceeding is concluded) a right to have up to 20 days to specify  
 20 the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL—  
 21 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appropriately  
 22 designated for protection within the 20 days shall be covered by the provisions of this Stipulated  
 23 Protective Order.

24 Transcript pages containing Protected Material must be separately bound by  
 25 the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or  
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1 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-  
2 party offering or sponsoring the witness or presenting the testimony.

3 ( c) for information produced in some form other than documentary, and for  
4 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
5 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or  
6 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

7 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
8 failure to designate qualified information or items as “Confidential” or “Highly Confidential—  
9 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure  
10 protection under this Order for such material. If material is appropriately designated as  
11 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” after the material was initially  
12 produced, the Receiving Party, on timely notification of the designation, must make reasonable  
13 efforts to assure that the material is treated in accordance with the provisions of the Order. If  
14 Receiving Party serves a written objection to the propriety of a “Confidential” or “Highly  
15 Confidential” designation under this section, the parties must make reasonable attempts to meet and  
16 confer to resolve the disputed designation(s). If such attempts fail, the Designating Party must  
17 move the Court for a protective order within thirty (30) days of the conclusion of the meet and  
18 confer discussions. If the Designating Party does not so move, the Receiving Party may treat the  
19 subject “Confidential” or “Highly confidential” designation(s) as having been waived.

## 20 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 5.1 Timing of Challenges. Unless a proper challenge to a Designating  
22 Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
23 unnecessary economic burden, or a later significant disruption or delay of the litigation, a Party  
24 does not waive its right to challenge a confidentiality designation by electing not to mount a  
25 challenge promptly after the original designation is disclosed.  
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1                   5.2 Meet and Confer. A Party that elects to initiate a challenge to a  
 2 Designating Party's confidentiality designation must do so in good faith and must begin the process  
 3 by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
 4 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis  
 5 for its belief that the confidentiality designation was not proper and must give the Designating Party  
 6 an opportunity to review the designated material, to reconsider the circumstances, and, if no change  
 7 in designation is offered, to explain the basis for the chose designation. A challenging Party may  
 8 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
 9 process first.

10                   5.3 Judicial Intervention. A Party that elects to press a challenge to a  
 11 confidentiality designation after considering the justification offered by the Designating Party may  
 12 file and serve a motion under Civil Rule 7 (and in compliance with Civil Local Rule 79-5, if  
 13 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.  
 14 Each such motion must be accompanied by a competent declaration that affirms that the movant has  
 15 complied with the meet and confer requirements imposed in the preceding paragraph and that sets  
 16 forth with specificity the justification for the confidentiality designation that was given by the  
 17 Designating Party in the meet and confer dialogue.

18                   The burden of persuasion in any such challenge proceeding shall be on the  
 19 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the  
 20 material in question the level of protection to which it is entitled under the Producing Party's  
 21 designation.

## 22                   6. ACCESS TO AND USE OF PROTECTED MATERIAL

23                   6.1 Basic Principles. A Receiving Party may use Protected Material that is  
 24 disclosed or produced by another Party or by a non-party in connection with this case only for  
 25 prosecuting, defending, or attempting to settle this litigation. Such Protected material may be  
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1 disclosed only to the categories of persons and under the conditions described in this Order. When  
 2 the litigation has terminated, a Receiving Party must comply with the provisions of section 10,  
 3 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a  
 5 location and in a secure manner that ensures that access is limited to the persons authorized under  
 6 this Order.

7 6.2 Disclosure of "CONFIDENTIAL: Information or Items. Unless  
 8 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
 9 may disclose any information or item designated CONFIDENTIAL only to:

10 (a) employees of the Receiving Party to whom disclosure is reasonably  
 11 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order"  
 12 (Exhibit A);

13 (b) experts (as defined in this Order) of the Receiving Party to whom  
 14 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
 15 Bound by Protective Order" (Exhibit A);

16 (c) the Court and its personnel;

17 (d) court reporters, their staffs, and professional vendors to whom disclosure  
 18 is reasonably necessary for this litigation;

19 (e) during their deposition, witnesses in the action to whom disclosure is  
 20 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"  
 21 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal  
 22 Protected Material must be separately bound by the court reporter and may not be disclosed to  
 23 anyone except as permitted under this Stipulated Protective Order.

24 (f) the author of the document or the original source of the information.

25 6.3 Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES  
 26



1 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by  
 2 the Designating Party, Receiving Party may disclose any information or item designated “HIGHLY  
 3 CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:

4 (a) Experts (as defined in this Order) (1) to whom disclosure is  
 5 reasonably necessary for this litigation, who have signed the “Agreement to Be Bound by  
 6 Protective Order” (Exhibit A);

7 (b) the Court and its personnel;

8 (c) court reporters and their staffs; and

9 (d) the author of the document or the original source of the information.

#### 10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED

#### 11 PRODUCED IN OTHER LITIGATION

12 If a Receiving Party is served with a subpoena or an order issued in  
 13 other litigation that would compel disclosure of any information or items designated in this action  
 14 as “CONFIDENTIAL” or HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” the  
 15 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
 16 and in no event more than three court days after receiving the subpoena or order. Such notification  
 17 must include a copy of the subpoena or court order.

18 The Receiving Party also must immediately inform in writing the Party who  
 19 caused the subpoena or order to issue in the other litigation that some or all the material covered by  
 20 the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
 21 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
 22 caused the subpoena or order to issue.

23 The purpose of imposing these duties is to alert the interested parties to the  
 24 existence of this Protective Order and to afford the Designation Party in this case an opportunity to  
 25 try to protect its confidentiality interests in the court from which the subpoena or order issued. The  
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1 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
 2 confidential material—and nothing in these provisions should be construed as authorizing or  
 3 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

4 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has  
 6 disclosed Protected Material to any person or in any circumstance not authorized under this  
 7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the  
 8 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the  
 9 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made  
 10 of all of the terms of this Order, and (d) request such person or persons to execute the  
 11 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

12 **9. FILING PROTECTED MATERIAL.** Without written permission from the  
 13 Designating Party or a court order secured after appropriate notice to all interested persons, a Party  
 14 may not file in the public record in this action any Protected material. A Party that seeks to file  
 15 under seal any Protected Material must comply with Civil Local Rule 79-5. In addition to placing  
 16 the documents in a sealed envelope with instructions that the envelope is not to be opened absent  
 17 further order of the court, the envelope should be labeled to identify title of the case, the case  
 18 number, and the title of the document.

19 **10. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing  
 20 by the Producing Party, within sixty days after the final termination of this action, each Receiving  
 21 Party must return all Protected Material to the Producing Party, as used in this subdivision, “all  
 22 Protected Material” includes all copies, abstracts compilations, summaries or any other form of  
 23 reproducing or capturing any of the Protected Material. With permission in writing from the  
 24 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of  
 25 returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must  
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1 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
 2 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the  
 3 Protected Material that was returned or destroyed and that affirms that the Receiving Party has not  
 4 retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing  
 5 any of the Protected Material.

6 11. MISCELLANEOUS

7 Right to Further Relief. Nothing in this Order abridges the right of any  
 8 person to seek its modification by the Court in the future.

9 12. JURISDICTION. The Court shall retain jurisdiction over any matter  
 10 covered by this Stipulation and Order for 24 months after the final termination of this action.  
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12  
 13 THE PARTIES HEREBY STIPULATE TO THE TERMS OF THE PROTECTIVE  
 14 ORDER AS SET FORTH ABOVE.

15  
 16 DATED: September 12, 2011 RACHEL LEDERMAN & ALEXSIS C. BEACH

17 By: 

18 Attorneys for Plaintiffs  
 DANIEL SPALDING, et al.

19  
 20 DATED: September 13, 2011

OFFICE OF THE CITY ATTORNEY

21 By: 

22 Attorneys for Defendants  
 CITY OF OAKLAND, et al.  
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 24  
 25  
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 DATED: 9/19/2011  
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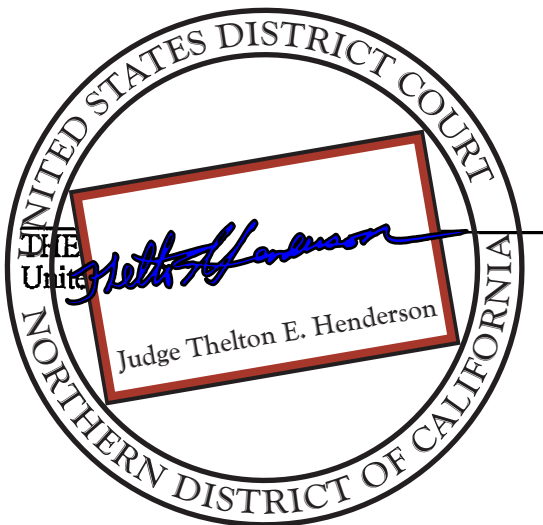


EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
 that I have read in its entirety and understand the Stipulated Protective Order that was issued by the  
 United States Court for the Northern District of California on \_\_\_\_\_ [date] in  
 the case of Daniel Spalding et al. v. City of Oakland, et al., Case No. C11-02867 TEH, I agree to  
 comply with and be bound by all the terms of this Stipulated Protective Order and I understand and  
 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature  
 of contempt. I solemnly promise that I will not disclose in any manner any information or item that  
 is subject to this Stipulated Protective Order to any person or entity except in strict compliance with  
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone  
 number] as my California agent for service of process in connection with this action or any  
 proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]